

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK KROMREY,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant.

ORDER

09-cv-376-bbc

In this civil action brought under the Freedom of Information Act, 5 U.S.C. § 522, plaintiff Mark Kromrey, who is proceeding pro se, alleges that defendant U.S. Department of Justice violated this statute by failing to comply with plaintiff's requests for information regarding an investigation he believes he helped to launch. Defendant has moved to dismiss plaintiff's complaint for insufficient process and lack of personal jurisdiction. In response, plaintiff has moved to re-file the summons in this case.

Defendant moves to dismiss this case for two reasons. First, the summons that plaintiff served on defendant was not signed and sealed by the clerk of court. Second, plaintiff did not serve the attachments to his complaint on defendant. On June 19, 2009, I explained to plaintiff that he needed to serve the complaint on the defendant. I enclosed with my order a copy of a document titled "Serving the United States, Its Agencies,

Corporations, Officers, or Employees.” The procedures explain how he needs to serve a copy of the complaint and the summons on defendant. Also, I told him I was enclosing the forms, including summonses, he would need to send to the defendant in accordance with the procedures set out in the memorandum on service. Unfortunately, the summonses included with the order sent to plaintiff were not signed and sealed by the clerk of court as they should have been. However, plaintiff proceeded according to the procedures and served the summonses, not knowing that they were deficient. Because plaintiff followed the procedures he was given, the insufficiency of process was not his fault. Therefore, I will deny defendant’s motion to dismiss the case.

I will have the clerk issue signed and sealed summonses and enclose them with this order. Plaintiff shall re-serve defendant with the new summonses and his complaint according to the procedures under Fed. R. Civ. P. 4(i), a copy of which was previously provided to him. He shall also include the attachments to his complaint with the complaint he serves. Plaintiff has until September 16, 2009 to serve the defendants pursuant to Fed. R. Civ. P. 4(m). However, if for some reason he is not able to serve the defendants by that date he may request an extension of time.

ORDER

IT IS ORDERED that:

1. Defendant’s motion to dismiss plaintiff’s case, dkt. #7, is DENIED;

2. Plaintiff's motion to re-serve defendant with proper summonses, dkt. #10, is GRANTED;

3. Plaintiff shall serve the signed and sealed summonses and his complaint with its attachments on defendant in accordance with Fed. R. Civ. P. 4(i) and file proof of service of his complaint as soon as service has been accomplished. Enclosed with this order are the summonses signed and sealed by the clerk.

Entered this 26th day of August, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge